



Missouri Department of Natural Resources

Clean Water Commission Water Protection Program

Meeting Minutes

April 28, 2004

MISSOURI CLEAN WATER COMMISSION MEETING

April 28, 2004

Capitol Plaza Hotel

415 W. McCarty St.

Jefferson City, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
David D. Minton, Vice-Chairman, Missouri Clean Water Commission
William A. Easley, Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Leo Alderman, U.S. EPA, Kansas City, Kansas
Michael Alesandrini, St. Louis RCGA, French Village, Missouri
Darrell Barber, Department of Natural Resources, Jefferson City, Missouri
Stacia Bax, Department of Natural Resources, Jefferson City, Missouri
Dorris Bender, City of Independence, Independence, Missouri
Robert Brundage, Newman, Comley & Ruth, Jefferson City, Missouri
Simon Buckner, Bartlett, Kansas City, Missouri
Mark Buersmeyer, Department of Natural Resources, Jefferson City, Missouri
John Carter, Doe Run, Viburnum, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Cindy DiStefano, MDC, Columbia, Missouri
Tom Engle, Duckett Creek Sanitary Sewer District, St. Charles, Missouri
Denise Evans, Department of Natural Resources, Jefferson City, Missouri
Bryan Fawks, Department of Natural Resources, Jefferson City, Missouri
Edward O. Gass, City of Pacific, Pacific, Missouri
Peter Goode, Department of Natural Resources, Jefferson City, Missouri
Bart Hager, MSD, Fenton, Missouri
Bob Hentges, MO Public Utility Alliance, Jefferson City, Missouri
John Hoke, Department of Natural Resources, Jefferson City, Missouri
Jim Hull, Department of Natural Resources, Jefferson City, Missouri
Malinda King, Department of Natural Resources, Jefferson City, Missouri
Dave Kindelspire, Department of Natural Resources, Jefferson City, Missouri
Marlene Kirchner, Department of Natural Resources, Jefferson City, Missouri
Mary Lappin, Kansas City MO Water Services, Kansas City, Missouri
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
John Lodderhose, MSD, St. Louis, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Susan Myers, Urban Areas Coalition, St. Louis, Missouri
Steve Morgan, Bartlett Grain Co. LP, Kansas City, Missouri

Kristi Perrin, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
David Potthast, Department of Natural Resources, Jefferson City, Missouri
Danny Rowatt, City of Pacific, St. Louis, Missouri
Marilyn Ruestman, State Representative, Joplin, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Carrie Schulte, Department of Natural Resources, Jefferson City, Missouri
David Shanks, Boeing, St. Louis, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Cynthia Smith, Department of Natural Resources, Jefferson City, Missouri
Terry Spence, Unionville, Missouri
Royan Teter, EPA Region VII, Kansas City, Kansas
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Richard Unverferth, MSD, St. Louis, Missouri
Ron Urton, Shafer, Kline & Warren, Chillicothe, Missouri
Tom Wallace, MEC Water Resources, Columbia, Missouri
Ray West, Hood-Rich, Inc. Engineers, Springfield, Missouri
Bob Williamson, KCMO Water Services, Kansas City, Missouri
Jack Woods, Town of Ludlow, Ludlow, Missouri
Betty Wyse, Department of Natural Resources, Jefferson City, Missouri

Administrative Matters

Call to Order/Introductions

Chairman Herrmann called the meeting to order at approximately 9:00 a.m. and introduced Commissioners Minton, Easley, Perry, Greene, and Hauser. Commissioner Kelly was absent. Chairman Herrmann then introduced Director of Staff Jim Hull, Assistant Attorney General Amy Randles, and Secretary Marlene Kirchner.

Public Hearing on the Intended Use Plan for Fiscal Year 2005

All witnesses were sworn in by the court reporter to testify at the public hearing held on the Intended Use Plan for Fiscal Year 2005. A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson St., Jefferson City, Missouri.

Presentation to Commissioner Janice Schnake Greene

Chairman Herrmann stated Commissioner Greene is resigning from the board effective June 1, 2004. She has had a faithful and vigorous participation on the Clean Water Commission for five years. She has served the Commission very well and been an active participant. Out of appreciation, the Commission presented Commissioner Greene a certificate of recognition.

Commissioner Greene explained it was a difficult decision for her to make. She has learned a lot serving on the Commission. It has been rewarding and frustrating. She

thanked all the department staff and other Commission members for their dedication and professionalism.

Adoption of March 10, 2004 Clean Water Commission Meeting Minutes

Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into the record.

Commissioner Hauser moved to accept the March 10, 2004 Clean Water Commission meeting minutes. Commissioner Greene seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Adoption of the March 26, 2004 Clean Water Commission Teleconference Meeting Minutes

Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into record.

Commissioner Hauser moved to accept the March 26, 2004 Clean Water Commission meeting minutes. Commissioner Easley seconded the motion. Commissioners Hauser, Minton, Perry, Easley, and Chairman Herrmann voted yes. Commissioner Greene abstained.

Jim Hull, Director of Staff of the Water Protection Program addressed the Commission about the length of the Clean Water Commission meeting minutes. The March 10 minutes were 40 pages long. In the past, the minutes have been transcribed almost word for word. It is becoming a very arduous task to transcribe the minutes this way. From now on, unless the Commission has concerns, Ms. Kirchner will summarize the discussions held at the Clean Water Commission meetings in the future. She will capture the major decisions that are made without doing them almost word for word.

Commissioner Greene inquired about the meeting tapes being kept.

Mr. Hull reported the meeting tapes are kept for future reference if needed.

Commissioner Perry stated if there is a point made that is so important it needs to go in the record, then the Commissioners need to indicate that they want that point clearly indicated in the record. There is always the opportunity for the Commissioners to not approve the meeting minutes.

Adoption of the April 5, 2004 Clean Water Commission Teleconference Meeting Minutes

Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into record.

Commission Perry moved to accept the April 5, 2004 Clean Water Commission meeting minutes. Commissioner Minton seconded the motion. Commissioners Minton, Perry and Chairman Herrmann voted yes. Commissioners Hauser, Easley, and Greene abstained.

Amy Randles, Attorney General's Office, stated that the April 5 minutes should be kept open until Commissioner Kelly can vote.

Chairman Herrmann stated in anticipation of Commissioner Kelly participating, the approval of the minutes will wait for her vote.

City of Odessa Intended Use Plan

Mark Buersmeyer, Water Protection Program, reported to the Commission the City of Odessa requests that their amount be increased from \$5.4 million to \$6 million. He reviewed the project and what they plan to construct.

Chairman Herrmann discussed the existing and projected population. The projected figure is 6,400. Total design for the improved facilities was 1.27 million gallons per day. Most of that went to the southeast lagoon, which had a design equivalent of 10,000 or 1 mgd. He asked if Odessa has considerable industrial, commercial flow?

Mr. Buersmeyer replied he doesn't believe they have substantial industrial flow. They have some commercial. The reason for going to a mechanical plant at the existing southeast site is that they knew they were going to have to meet more strenuous limits to start with.

Chairman Herrmann stated the information provided to the Commission says the proposed enlargement of the northwest lagoon will consist of enlarging the existing cell and constructing two additional cells creating a three cell lagoon system. He asked if it's planned how the present flow would be given acceptable treatment during this period of expansion of the existing lagoon cell?

Mr. Buersmeyer stated he is sure it is. They have done an excellent job. He is not sure exactly how they have decided to do that.

Commissioner Minton asked how does the increase effect the list, what impacts would that have?

Ann Crawford, formerly with the Financial Assistance Center, stated anytime there is an increase, even with a prior project, it's going to take up funds. There were \$46 million left for these other projects to compete with. This increase is around \$600,000. It will effect it although not greatly.

Commissioner Minton asked if it impacts anyone else on the list?

Ms. Crawford replied it would impact those on the Planning list. Whoever would get their bond issue facility plan in, that would be the project that would be effected if we were to run out of funds.

Commissioner Perry stated Alternative 5 on page 103 was determined to be the preferred alternative with the cost of \$4.8 million. They applied for \$5.4 million and they're asking for \$6.0 million. She asked what is the difference?

Mr. Buersmeyer replied they are on the old IUP for \$5.4 million. They reapplied for around \$5.8 million. That one was set aside. They only reapplied in case of an emergency if this closing doesn't go through. They did reapply to be on the new IUP for a higher amount. Hopefully that won't be necessary if they finance this time.

Commissioner Easley requested the information be gathered and presented to the Commission later in the meeting.

Mr. Buersmeyer returned and stated the question was how will the existing flow at the northwest lagoons be handled during construction? They are going to go from one cell to three so they will construct the two new cells and pipe around. After those two are ready and on line, they will expand the existing one. The water quality should not change.

The cost estimates they had were actually received in April 2001. Actual estimated construction costs were \$4,850,000. Those costs were old costs and they didn't include engineering. They have contracts not to exceed \$675,000 from Allgeier, Martin & Associates. They estimate between program cost of issuance and local cost of issuance to be about 3%, which should be another \$180,000. That's \$855,000, which would get them up to \$5,705,000. Some increase in cost due to the lengthy timeframe and also continuancy should get them to the \$6 million.

Chairman Herrmann asked Ms. Crawford how this might effect other projects that have been approved and financed?

Ms. Crawford replied with the new Intended Use Plan, they will revise the chart, and will take out the \$600,000 for the beginning number. It will effect it by \$600,000. They had about \$46 million left so it will come off of that balance that is left. As far as the fundable projects go, it will not effect them. It would effect the planning projects by \$600,000.

Commissioner Greene recommended they approve the increase of \$600,000 to the City of Odessa. Commissioner Hauser seconded the motion. The motion passed unanimously.

Duckett Creek Variance

Richard Laux reported the staff recommendation was presented at the March 10, 2004 meeting. The recommendation was to approve the variance request. The public comment period runs through 5:00 p.m. on May 5th. It will be presented as an action item at the June 2nd meeting.

Tom Engle with the Duckett Creek Sanitary Sewer District gave a presentation on Duckett Creek.

Chairman Herrmann stated the flow charts handed out at the March 10 meeting indicated disinfection before discharge. The flow chart on today's presentation did not indicate disinfection.

Mr. Engle replied they will probably put disinfection on so that it is there. They are going to work with the Department of Natural Resources on that.

Chairman Herrmann asked Mr. Engle if they would be adverse to that being a permit requirement to add disinfection?

Mr. Engle replied no they would not.

Commissioner Hauser asked considering a total ownership cost of MBR versus traditional package treatment, have you run those numbers?

Mr. Engle replied yes they have. They're about 70% of where a regular package treatment plant is.

Commissioner Hauser noted the total ownership cost may ultimately be lower even with their land cost.

Mr. Engle replied yes it may be. He explained they have a set price in their district, which is a \$400 connection fee and they charge \$15 a month for anyone that's hooked onto their system. They decided that anyplace they have put a new MBR plant, they are basically going to make it a cost center. They will look at the area it will serve, figure out how many developer acres of land there are, and have the developers pay half the cost of that plant over 20 years. Their connection fee may be from \$800 to \$1,600 depending on how big that plant is. They will then add on \$4 - \$10 per house as an additional cost to retire the debt on the plant. So basically, the homeowner pays for it.

Chairman Herrmann noted these things are not susceptible to upset by shock loading. The information provided by Mr. Engle says it tolerates shock loading. He assumes that is the purpose of the equalization tank.

Mr. Engle replied yes. There are two things - - the equalization tank and a pre-screening process.

Chairman Herrmann asked if they would accept a permit, which limits BOD and NFR to 5/5 and requires disinfection?

Mr. Engle replied yes.

Mr. Laux added they will be asking the Commission for final action at the June 2nd meeting

Chairman Herrmann asked staff if they could provide the Commissioners something that shows the limits of the watershed area and the limits of coverage of this proposal, the watershed that this plant will potentially serve?

Mr. Laux said he would try to have a map in the packet for the next Commission meeting.

Jim Hull - Introductions

Mr. Hull introduced Betty Wyse, new director of the Financial Assistance Center. Steve Townley was the previous section chief of that section. Ann Crawford was acting in the position until Ms. Wyse was hired.

Bartlett & Company, Waverly Missouri Variance Application

Richard Laux reported that on March 15, 2004 a Variance Application and fee were received from Bartlett Country Elevators, LLC. They are seeking relief from 10 CSR 20-8.500, which addresses criteria for the design, construction and operation of secondary and operational area containment structures at bulk agrochemical facilities. It has the same conditions listed for their previous variance request.

Chairman Herrmann asked if they approved the variance before?

Mr. Laux replied yes. The original staff recommendation wasn't to approve, but after discussions with the Commission and the applicant, the staff recommendation was revised, conditions were added, and the recommendation was then accepted. Integrity testing was the biggest issue.

Mr. Hull asked if this variance request needs to go through public notice and comment?

Mr. Laux replied this is just a staff recommendation for approval. If the Commission accepts the recommendation, then they will proceed to do the public notice. This is the first presentation of this particular variance. If the Commission doesn't take the recommendation, and it's disapproved, the 30-day appeal period will go into effect and they would notify the applicant.

Commissioner Greene moved that they accept the staff recommendation and suggested they proceed to have the proper hearing process. Commissioner Easley seconded the motion. The motion passed unanimously.

Village of Ludlow Variance Application

Richard Laux reported that on March 8, 2004 a Variance Application and fee were received from the Village of Ludlow seeking relief from 10 CSR 20.7.015(8)(B)(3). This portion of the rule requires standard secondary treatment limits ("30/30") for Biochemical Oxygen Demand and Total Suspended Solids unless a water quality impact study is completed which shows that alternate, less stringent limitations will not cause violations of the Water Quality Standards or impairment of the beneficial uses of the receiving stream.

Commissioner Perry noted the city has designed the project not realizing that they had to comply with the 30/30.

Mr. Laux replied that is correct. They designed it as a lagoon to meet the lagoon limits that are also listed in that section that says if you do a study, you can have higher limits for trickling filters and lagoons. It specifies what those higher limits can be. In the past the department hasn't required these studies in every instance and they have been called on that. It has been questioned why the department is allowing construction of lagoons and trickling filters without the studies. The Village of Ludlow got caught and their design had been approved. They proceeded on to where they are ready to build and this issue has not just come up. The department has looked at the site. It appears to be a standard Missouri site. There is a good chance that the lagoon will be protective, but they have not conducted a predictive analysis that will be necessary under the rules to allow the higher limits.

Amy Randles clarified the same caveat applies as to the previous variance request. She asked if this is just beginning preliminary approval?

Mr. Laux replied yes. The department is making staff recommendation and depending on if it's excepted or not, they would public notice the intent to approve if that is the decision. The department will inform the applicant if the Commission denies the recommendation.

Jacks Woods, Town of Ludlow, asked the Commission to waive the Clean Water Quality study for keeping the cost of the project as low as possible and keeping the cost to the consumer as low as possible. Prior projects did not require this study, and over the variation of this project, the pricing did not include this. They are asking for the Commission to grandfather this in.

Commissioner Easley asked what is the cost of the study?

Mr. Woods replied it is approximately \$6,500. There was no competitive bidding. One person did it.

Commissioner Perry asked what is the cost of the project?

Mr. Woods replied approximately \$900,000 - \$1,000,000.

Commissioner Perry asked what is the population of the Village of Ludlow?

Chairman Herrmann replied the 2000 Census reflects 204 reported. The application for the variance lists the receiving stream as an unclassified stream flowing to Schoal Creek Drainage Ditch Class C stream.

Mr. Woods replied they are referring to a man made ditch. Schoal Creek itself is a cut off.

Chairman Herrmann asked what is the length of the ditch to Schoal Creek?

Mr. Woods replied 1 ½ miles from the lagoon to where it enters Schoal Creek Ditch.

Chairman Easley asked what county they are in?

Mr. Woods replied Livingston.

Richard Laux clarified what they are talking about is a channelized portion of the actual creek.

Chairman Herrmann asked who draws drinking water supply from Schoal Creek?

Mr. Laux replied Chillicothe.

Commissioner Greene asked who does the instream monitoring?

Mr. Laux replied that would be a requirement of the NPDES Permit. They would incorporate the monitoring into the permit. They haven't discussed frequency. The monitoring would be on the permit holder to provide during the life of the variance.

Chairman Herrmann asked if the water monitoring would be on the Schoal Creek?

Mr. Laux replied generally when they have instream monitoring it is designed to show that the classified section does obtain standards. They are talking upstream and downstream where the tributary comes into Schoal Creek. Normally they look for bridge accesses and would propose that in the permit.

Chairman Herrmann stated that would become part of the periodic reporting under the NPDES permit.

Mr. Laux replied yes. It would be part of the discharge monitoring reports and be reviewed by staff when they look at the affluent values.

**Commissioner Minton made a motion to accept staff recommendation.
Commissioner Greene seconded the motion. The motion passed unanimously.**

Commissioner Easley moved that the Clean Water Commission go into Closed Session to discuss legal, confidential, or privileged matters under Section 610.021 (1), RSMo; personnel actions under Section 610.021 (3), RSMo; personnel records or applications under Section 610.021 (13), RSMo or records under Section 610.021 (14), RSMo which are otherwise protected from disclosure by law. Commissioner Minton seconded the motion and all Commissioners and Chairman Herrmann voted yes.

Commissioner Greene moved for the Clean Water Commission to come out of closed session and go back into open session. Commissioner Perry seconded the motion and all Commissioners and Chairman Herrmann voted yes.

EPA Region VII Update

Leo Alderman, Director of the Water Wetlands and Pesticides Division with EPA Region VII, Kansas City, Kansas gave an update.

Mr. Alderman gave congratulations to the Clean Water Commission and the Department of Natural Resources in working with the draft rulemaking for the Water Quality Standards. They are pleased with the progress. Mr. Alderman stated he will make himself personally available to work with the state of Missouri on any issues that come up while going through the process. They would like to get a document where they can approve the entire package.

Water Protection Program Planned Initiatives

Jim Hull reported at the last Commission meeting it was suggested to provide the Commissioners with periodic updates on where the program is with various activities.

Mr. Hull distributed copies of a letter from the Missouri Department of Transportation honoring the MoDOT/DNR Permits/NOVs Team. Staff from both the departments are working together to improve the relationships between the two agencies when it comes to various types of permits and improving their compliance with environmental laws and regulations. The team was named an Exemplary Partner of the American Association of State Highway and Transportation Officials' Team Excellence Program. The two members of the team from Mr. Hull's staff are Becky Shannon and Phil Schroeder.

Mr. Hull reported on initiatives that are underway in the Water Protection Program in 2004. At the beginning of the year there was a reorganization of the Water Pollution Control and Public Drinking Water programs. There have been various changes in the makeup of the sections. Jim included new organization charts. The organization charts reflect Mr. Hull reporting to the Clean Water Commission. There has been a movement in the location of the 401 Certification work from Watershed Protection Section to Permits and Engineering Section.

Mr. Hull covered initiatives for NPDES Permits and Engineering Section, Water Protection Financial Assistance Center, Watershed Section, Water Quality Monitoring and Assessment Section, and Compliance and Enforcement.

Mr. Hull discussed Letters of Approval. There has been a program in place for several years where the department provides approvals for construction and operation. The FTE devoted to that work has been eliminated from the FY05 budget. The work in that particular area will be phased out.

Commissioner Perry asked if there is a way for the work to be transferred to the Natural Resources Conservation Service (NRCS)?

Becky Shannon, Chief of the Watershed Protection Section, replied the department has spoke with NRCS about the needs that the department will have as far as the funding aspect of this. NRCS is already doing the design work for the 319 and AGNPS SALT projects. The department is discussing with NRCS to have them provide the department with a letter, stamped by the person doing the design work, that it meets their standards. This is not the case for those projects funded by the State Revolving Fund because they don't have the staff to take on the additional work.

Chairman Herrmann asked if the NRCS designs comply with other parts of the regulations, which says they must be done by a Professional Engineer in the State of Missouri?

Ms. Shannon replied they have talked about either NRCS certifying that it meets their standards or have a registered Professional Engineer. Chairman Herrmann stated the regulations say it must be a Professional Engineer. He asked Ms. Shannon to investigate that for him.

Ms. Shannon returned and addressed Chairman Herrmann regarding NRCS and their use of engineers in the design of animal waste management systems. Facilities under the permit requirement level are not necessarily stamped by a registered Professional Engineer, but it's designed to meet the standards that were developed by a Professional Engineer.

Chairman Herrmann suggested to Ms. Shannon to read Section 644 and make a determination that that is not acceptable to the regulations of the state of Missouri. If it's

stamped by someone, the regulation of the Registration Board also says that person must have direct and continuing supervision of the preparation of those documents.

Mr. Hull reported the Coalition for the Environment has filed a lawsuit against EPA Region VII for failure to require Missouri to make revisions to the department's Water Quality Standards in a timely manner. The Urban Area Coalition and Association of Metropolitan Sewage Agencies have filed a petition to intervene in that lawsuit.

Mr. Hull pointed out the Water Protection Program had previously discussed with the Commission about proceeding with a rulemaking package to address a number of items. This includes designating certain waters of the state for whole body contact. The program has proposed to EPA that they will be publishing the proposed rule in July 2004 providing for an extended stakeholder public involvement process, public hearings, on the proposed changes with the objective of finalizing those rule changes by July 2005. On the whole body contact issue, the department's direction is designating all classified waters of the state for whole body contact effective the date of the rule; providing a timeframe for facilities that are currently discharging into those streams to come into compliance; or to do a Use Attainability Analysis (UAA) to demonstrate that they did not need to disinfect.

Chairman Herrmann suggested there are a couple of mandatory changes that should take place in that rule. One is the present regulation reflects 0.1 mgd and the draft shows .01 mgd. The other is the interchangeability throughout 7015 and 7031 of fecal coliform and ecoli. It should be one standard in all parts.

Mr. Hull mentioned the department needs to come up with procedures on how to do UAA's. The program does not have the resources to do a UAA for every stream that needs it in the state. After procedures are in place they need to work with various partners on how to go about getting that information either working through sister agencies within the state or with others that represent those that will be impacted by changes in the regulation.

Mr. Hull reported on the 303(d) List and the methodology. The Commission had asked the department to put the methodology into regulation. A general consensus was met on a general methodology rule, which references a detailed methodology document that would be developed through a stakeholder process and brought back to the Commission for approval prior to using it to prepare the next 303(d) List. That is the way it was finalized. The final rule was submitted to the Joint Committee on Administrative (JCAR) Rules on April 9. Certain members of JCAR had expressed concern about the detailed methodology that was referred to in that rule, not being a rule in itself. It needs to be determined whether or not the department will be filing an amended order of rulemaking.

Commissioner Perry asked if the general methodology rule can be amended and say that the guidance portion shall be promulgated by rule?

Ms. Randles replied yes. She has come up with some language that can be considered for addressing JCAR's concerns. It reads "The detailed methodology referenced in this paragraph shall be promulgated by the Commission through rulemaking procedures in the manner specified in Chapter 536, RSMo" and "The 303(d) List developed pursuant to paragraph (4) (B) of this rule shall be promulgated by the Commission through rulemaking procedures in the manner specified in Chapter 536, RSMo, and upon its effective date, the list shall be consistent with the detailed methodology developed pursuant to paragraph (4) (A) of this rule."

Mr. Hull reported if they make these changes JCAR should be satisfied with this rulemaking.

Commissioner Minton asked if the 303(d) List and Methodology Rule will be proposed at the same time?

Mr. Hull replied in order to do it within the timeframes previously stated to EPA, they would have to be done simultaneously.

Commissioner Minton asked if by chance JCAR had a problem with the amended language, what will be need to be done to facilitate the process to stay in the timeline?

Ms. Randles replied she believes that this amendment addresses any legal concerns JCAR has. If JCAR still has concerns the department will need to be responsive to questions and deal with it as it arises.

Chairman Herrmann entertained a motion to adopt the amendments suggested by counsel. Commissioner Greene made a motion to adopt the amendments to the final order of rulemaking. Commissioner Easley seconded the motion. The motion passed unanimously.

Mr. Hull reported on the department's continued work on TMDL's. Last year 35 TMDL's were done. This year they are to do 21 additional TMDL's, thus far they have done 12.

Chairman Herrmann stated at the January 28 Clean Water Commission meeting, Bill Bryan with the Attorney General's Office and Dr. Joe Engeln, Assistant Director for Science and Technology with the Department of Natural Resources promised the Commission the end of the second year report on the implementation of their innovative program. Chairman Herrmann has not seen it.

Mr. Hull replied he will try to get them to the June 2nd Commission meeting to talk about that.

Commissioner Minton would like to have a timeline on the rules reflecting where they are at in the process. Mr. Hull stated one of the things they have been working on is a regulatory report of rules with anticipated start and finish dates.

Review of Kansas' Use Attainability Assessment Protocol (UAA)

Stacia Bax with the Water Protection Program reported. A UAA is a method that can be used for all designated uses, although today's presentation focuses on recreational uses. Uses cannot be removed if existing or attainable. She reviewed the general UAA process and reported on the history of the Kansas process.

Chairman Herrmann reported March 26, 2001 is about the time UAA's were developed and implemented. The court order became effective in June 2003. There were 1,062 primary streams of the 1,292. There were 1,062 streams classified for primary contact. There were 225 streams classified for secondary contact. The disapproval occurred in February 1998, the suit was filed in August 1999. On July 3, 2000 EPA signed the consent decree and on December 13, 2000 the suit was filed. The court order was finally issued in June 2003.

Ms. Bax reviewed classified water bodies and recreational use definitions in Kansas, and UAA protocol development by the Kansas Department of Health and the Environment (KDHE). She reviewed the history of recreational use designation in Missouri and classified water bodies. The number of lake segments in Missouri totals 455. Missouri has a total of 3,751 stream segments. Waters of the state needing UAA's (due to no whole body contact recreational use designation) are 3,774 segments.

Ms. Bax reported currently there are no staff resources dedicated to doing UAA's. If the department would follow the Kansas approach they would need what Kansas has which is 6 individuals working on the streams, and two on the lakes. They would need an internal or inter-agency review committee, a QAQC program, and go through the rulemaking process. A database would have to be established. Three to four GPS units and cameras may need to be purchased.

Chairman Herrmann suggests the proposed regulation say that the UAA's be done by either the staff or by the effected individuals. The proposed regulation suggests the operators of the effected permitted facilities will do the UAA's. That would lessen the manpower. Chairman Herrmann recommends using college students to work with the streams not full time staff, which is what Kansas did.

Commissioner Greene stated that the checklist is something that the department could use in developing this.

Phil Schroeder, Chief of the Water Quality and Assessment Section, stated there is some preparation that would have to be done. The Kansas program could be adapted in Missouri. Whatever is developed for Missouri, it has to be in accordance with our own

rules, regulations, and state law. The department needs to work with stakeholders and make sure the decisions made on UAA's are with their consideration.

Mr. Schroeder asked will staff be able to go ahead and proceed immediately with working with stakeholders and developing this process and come back to the Commission for comments to move forward or will they have to go through a rulemaking process as Kansas did?

Commissioner Perry asked whether legislation was needed to address whether the UAA protocol needs to be promulgated as a rule?

Ms. Randles stated she doesn't think the department needs legislation stating whether it has to be a rule or not. The general Chapter 536 provisions whether something constitutes a rule, and whether it has to go through rulemaking or not. Ms. Randles reported she can advise staff about that. If it does need to be a rule, she will work with the department developing the language in that manner. If it doesn't need to be a rule, then she will advise staff accordingly. It would go faster if it didn't go through the rulemaking process. There will be a rulemaking at the end of the day on any change of designation that occurs as a result. There also will be some UAA's where it ends up saying it is whole body contact and the designation shouldn't change if it's already been designated as such.

Commissioner Greene stated since we have the Kansas model, maybe we should start going forth and establishing protocol.

Jim Hull reminded the Commission the program has many priorities.

Bob Williamson, Kansas City MO Water Services, has some concerns over what is developing on UAA's. It will effect wastewater treatment plants. The whole body contact designation will cost him approximately \$10 million. There is a proposed rulemaking that is going to be published in July. It seems to have been done from the umbrella of legal litigation. Mr. Williamson asked if they can submit what they believe is rebutted evidence of the proposed use and never have it promulgated as designated use?

Chairman Herrmann replied yes. Mr. Hull commented the proposed rule is going to be designating waters for whole body contact immediately with a delayed implementation. There will be a process in place where UAA's can be performed prior to having to come into compliance.

Budget and Legislative Discussion

Bryan Fawks, Deputy Director of the Water Protection and Soil Conservation Division, reported on legislation. There are a couple of different versions of the Regulatory Impact Report legislation. The House bill version is on the third reading calendar in the Senate. The Senate version has been in conference for many weeks and is being held up. Sand

and Gravel legislation is moving through the legislature. The Audit Privilege legislation bills are still in their original house of origination. There hasn't been much movement but they could be resurrected. The CAFO legislation House bill is on the third reading calendar in the Senate. The Senate version is still in the Senate. If it continues to move, it will probably be the House version. Legislation from last year that was proposed by Senator Steelman, that would establish the environmental hearing procedures being shifted to the Administrative Hearing Commission, may be resurrected.

Mr. Fawks reported on the budget, the House and Senate are still debating the differences between the two budgets. The main difference in Water Pollution is the Senate reduced the E&E appropriation. The impact is unknown at this time. The division as a whole took a cut of approximately \$1 million in federal and other appropriation. There are opportunities with these appropriations to receive additional grants from EPA should those become available. They often apply for Wetlands Grants and other research type proposals and use these appropriations for those. This doesn't cut any money out of the budget; it cuts spending authority for federal and other funds. The House budget included a minor reduction, they took 10% of the remaining general revenue in the Water Protection Program, which was \$351.

Public Comment and Correspondence

Susan Myers, Urban Area Coalition of St. Louis, Missouri thanked Peter Goode and other DNR staff for setting up and organizing the Wet Weather Stakeholders Group. They met a couple of weeks ago and as a group they prioritized their goals and agreed that they would try to address each goal and develop some sort of policy and bring that policy to the Commission for approval.

Ms. Myers explained the goals they prioritized were wet weather water quality standards, CSO's, SSO's, blending, and stormwater issues. The next meeting is scheduled for May 4, 2004 to address the wet weather water quality standards.

Mike Alesandrini, St. Louis RCGA, reported in March 2004, there was a letter from Joe Bindbeutel of the Attorney General's Office addressed to Mr. Alesandrini and each of the Commissioners were copied on the letter. It expressed some views rather fervently, and Mr. Alesandrini explained that was the result of a letter that was drafted in relation to issues for another Commission that ended up with Mr. Bindbeutel out of context. Mr. Bindbeutel expressed his dissatisfaction. They have worked out the issue.

Mr. Alesandrini reported there is a stakeholder group that has been meeting with some DNR staff for over a year discussing budgetary challenges. One of the things that came out of the stakeholder discussion is a challenge to the department, to examine across the board anything that is being done for free, taking up staff time, particularly staff funded by fees paid by the regulated community and suggesting to them to take a hard look at those and figure out if they need to be doing those for free. Letter's of Approval was one of the examples. RCGA would like DNR to continue having those kinds of discussions, looking at things like that.

Future Meetings

Jim Hull reported the next meeting is scheduled for June 2, 2004 at Capitol Plaza Hotel in Jefferson City. There is not a meeting scheduled after that.

It was decided for the Commission to meet again on August 4, 2004. The meeting place is yet to be determined.

Chairman Herrmann declared the meeting adjourned.

Respectfully submitted,

Jim Hull
Director of Staff